

MINUTES OF THE OPEN SESSION

OF THE RHODE ISLAND ETHICS COMMISSION

November 19, 2013

The Rhode Island Ethics Commission held its 12th meeting of 2013 at 9:00 a.m. at the Rhode Island Ethics Commission conference room, located at 40 Fountain Street, 8th Floor, Providence, Rhode Island, on Tuesday, November 19, 2013, pursuant to the notice published at the Commission Headquarters, the State House Library, and electronically with the Rhode Island Secretary of State.

The following Commissioners were present:

Ross Cheit, Chair Mark B. Heffner*

Deborah M. Cerullo SSND, Vice Chair Edward A. Magro**

Frederick K. Butler Robert A. Salk

Also present were Edmund L. Alves, Jr., Commission Legal Counsel; Kent A. Willever, Commission Executive Director; Katherine D'Arezzo, Senior Staff Attorney; Staff Attorneys Jason Gramitt, Nicole B. DiLibero and Amy C. Stewart; and Commission Investigators Steven T. Cross, Peter J. Mancini and Gary V. Petrarca.

At 9:02 a.m. the Chair opened the meeting. The first order of business was the approval of minutes of the Open Session held on

October 8, 2013. Upon motion made by Commissioner Magro and duly seconded by Commissioner Cerullo, it was

VOTED: To approve minutes of the Open Session held on October 8, 2013.

AYES: Frederick K. Butler; Deborah M. Cerullo; Robert A. Salk; Ross Cheit.

ABSTENTIONS: Edward A. Magro.

The next order of business was the Director's Report. Executive Director Willever reported that there were twenty (20) complaints pending, eighteen (18) of which were for the non-filing of financial statements. He also stated that there were six (6) advisory opinions and one (1) litigation matter pending. He stated that fifteen (15) APRA requests were granted since the last meeting, all of which were completed within one (1) business day.

The Executive Director informed that we generally only have one meeting in December and suggested holding it on December 17, 2013. After discussion, it was decided that the next meeting will be held on December 17, 2013, and the meeting scheduled for December 3, 2013, will be cancelled.

***Commissioner Heffner arrived at 9:07 a.m.**

The next order of business was advisory opinions. The advisory opinions were based on draft advisory opinions prepared by the Commission Staff for review by the Commission and were scheduled as items on the Open Session Agenda for this date. The first advisory opinion was that of:

Patrick A. Guida, Esq., a member of the Rhode Island Board of Education, requesting an advisory opinion regarding whether the Petitioner's business associate, Duffy & Sweeney, LTD, is prohibited by the Code of Ethics from being engaged by the Rhode Island Department of Elementary and Secondary Education as outside legal counsel.

Staff Attorney Stewart presented the Commission Staff recommendation. The Petitioner was present. In response to Commissioner Cerullo, the Petitioner stated that he requested this opinion as a precautionary step and to avoid any appearance issues. He stated that the Board of Education has eleven (11) members. Upon motion made by Commissioner Heffner and duly seconded by Commissioner Butler, it was unanimously

VOTED: To issue an advisory opinion, attached hereto, Patrick A. Guida, Esq., a member of the Rhode Island Board of Education.

The next advisory opinion was that of:

Andrea M. Iannazzi, Esq., a member of the Cranston School Committee, requesting an advisory opinion regarding whether the Code of Ethics prohibits her participation in the School Committee's consideration of whether to privatize student transportation services or, alternatively, to negotiate a new collective bargaining agreement with the Cranston School Department's current student transportation personnel.

Staff Attorney Stewart presented the Commission Staff recommendation. The Petitioner was not present; however, Ronald F. Cascione, Esq., was present on the Petitioner's behalf. In response to Commissioner Cerullo, Mr. Cascione stated that the Petitioner sought this advisory opinion to address any appearance issues given the Petitioner's father's previous employment with another LIUNA local and his current employment with the Rhode Island Public Employees Health Services Fund. Staff Attorney Stewart stated that the Petitioner represents that her official actions on the Cranston School Committee will have no impact upon her father's employment.

Upon motion made by Commissioner Butler and duly seconded by Commissioner Salk, it was unanimously

VOTED: To issue an advisory opinion, attached hereto, to Andrea M. Iannazzi, Esq., a member of the Cranston School Committee.

The next advisory opinion was that of:

Russell J. Chateaufneuf, the former Chief of Groundwater and Wetlands Protection for the Rhode Island Department of Environmental Management (“DEM”), requesting an advisory opinion regarding whether the Code of Ethics prohibits or limits his private employment with an environmental science and engineering firm in the year following his severance from public employment.

Staff Attorney Gramitt presented the Commission Staff recommendation. The Petitioner was present. In response to Chair Cheit, the Petitioner informed that the Providence office of the Horsley Witten Group (“HW”) has three (3) people working in it, including himself. He stated that HW’s main office is located in Sandwich, Massachusetts, where there are approximately fifty (50) employees, including the Petitioner’s supervisor. He noted that his only DEM interactions, relative to his employment at HW, have been making requests for public records and the occasional delivery of packages. He offered to refrain from those actions if the Commission believes it is a problem. He informed that in his interactions with DEM he is very careful not to discuss HW projects.

Discussion ensued about whether the Petitioner is exercising influence over his former co-workers when he delivers a package to DEM. At the request of Commissioner Heffner, Staff Attorney Gramitt read aloud the following definition found at R.I. Gen. Laws § 36-14-2(13) to the Commission: “A person ‘represents’ another person before a state or municipal agency if he or she is authorized

by that other person to act, and does in fact act, as the other person's attorney at law or his or her attorney in fact in the presentation of evidence or arguments before that agency for the purpose of influencing the judgment of the agency in favor of that other person."

Commissioners Heffner and Salk expressed concerns regarding the interaction between the Petitioner and DEM staff when he delivers a package. However, Commissioner Butler noted that this does not equate with presenting evidence to his former agency. Chair Cheit commented that there appears to be no reason that the Petitioner would have to personally deliver anything to DEM on behalf of HW.

Commissioner Cerullo expressed concerns regarding the Petitioner's private employer, HW, appearing before his former state agency because it would be clear to the DEM employees that he works at HW.

Staff Attorney Gramitt replied that prior advisory opinions have not prohibited a person's employer from going before an employee's former agency, as long as it is not the person subject to the revolving door restriction who appears on their employer's behalf. He added that the Petitioner is free to share information about DEM and the application process, provided that the information is not confidential. In response to Commissioner Cerullo, Staff Attorney Gramitt stated that the benefit to HW, in hiring the Petitioner, is not prohibited by the Code of Ethics. In response to Commissioner Salk, the Petitioner stated that any DEM application will not have his engineer stamp or his signature on them until the one-year period has passed. He stated that he will also have no interactions with DEM on behalf of

HW during that time.

Chair Cheit stated that the revolving door provision only prohibits certain activities and noted that this discussion was primarily focused on concerns about appearances of impropriety. He added that it seems that this Petitioner fully understands the limits placed upon him by the Code of Ethics.

In response to Commissioner Cerullo, Staff Attorney Gramitt stated that section 5(e) of the Code of Ethics contains many stated definitions. He noted that the Commission does not have jurisdiction over the Petitioner's private employer and can only proscribe the conduct of the person subject to the Code. He stated that, in his opinion, the statute would not support the extension of the one-year prohibition to the Petitioner's employer.

Discussion ensued about what it means to influence the judgment of your former agency. Chair Cheit stated that there is less of a chance for the Petitioner to influence DEM in making a public records request than there is if he is delivering application materials. He added that there needs to be a balance in the revolving door restrictions so as not to preclude former public employees from gainful employment. Commissioner Cerullo expressed concern that the Petitioner's insider knowledge of DEM is at the disposal of HW, irrespective of whether he is appearing before DEM. Commissioner Heffner stated that the Petitioner is not taking any affirmative steps to exercise influence

over DEM and he cannot control the conclusions that DEM employees may draw related to the his employment at HW.

Chair Cheit questioned whether the Petitioner should refrain from having even ministerial contacts with DEM, relative to HW, until the one year is over. Commissioner Butler stated that he did not think that was necessary. He noted that the DEM employees who accept the delivery of a package are not the decision makers.

Commissioner Cerullo questioned whether the Petitioner's employer, HW, gains an unfair advantage over other engineering firms by hiring him. The Petitioner responded that he was hired for his expertise, but he understands the limitations placed upon him by the Code of Ethics and made them known to HW before he was hired. Commissioner Butler stated that this advantage to HW in hiring the Petitioner is not prohibited by the Code. Chair Cheit added that it would be unfair to prohibit the Petitioner from seeking private employment in his area of expertise for one-year after he leaves public service.

Commissioner Heffner suggested amending the advisory opinion to include representations that the Petitioner agrees to refrain from interacting with DEM personnel, on behalf of HW, until the one-year period has passed. Upon motion made by Commissioner Heffner and duly seconded by Commission Magro, it was

VOTED: To issue an advisory opinion, as amended and attached

hereto, to Russell J. Chateauneuf, the former Chief of Groundwater and Wetlands Protection for the Rhode Island Department of Environmental Management.

AYES: Robert A. Salk; Frederick K. Butler; Mark B. Heffner; Edward A. Magro; Ross Cheit.

NOES: Deborah M. Cerullo.

The next advisory opinion was that of:

Dorothy Z. Pascale, the Chief of the Rhode Island Bureau of Audits, requesting an advisory opinion regarding whether the Code of Ethics prohibits her from engaging in self-employment, on her own time, as an income tax preparer.

Staff Attorney Gramitt presented the Commission Staff recommendation. The Petitioner was present. The Petitioner stated that she was employed by Department of Administration, not the Division of Taxation. She noted that only Taxation employees have access to the database of tax filings. Upon motion made by Commissioner Magro and duly seconded by Commissioner Salk, it was unanimously

VOTED: To issue an advisory opinion, attached hereto, to Dorothy Z. Pascale, the Chief of the Rhode Island Bureau of Audits.

The next advisory opinion was that of:

Robert F. Raimbeault, Jr., an alternate member of the Pawtucket Zoning Board of Review, requesting an advisory opinion regarding whether the Code of Ethics prohibits him from appearing before the Pawtucket Zoning Board of Review to oppose a use variance application for which he received notice as an abutter.

Staff Attorney Stewart presented the Commission Staff recommendation. The Petitioner was present. Discussion ensued about whether it was appropriate to apply both the hardship exception to section 5(e) and the public forum exception in this matter. Staff Attorney Stewart stated that prior advisory opinions included both sections and the facts represented by the Petitioner indicate that he qualifies for the application of both exceptions. Staff Attorney Gramitt stated that we apply both exceptions because we are hesitant to simply apply the powerful public forum exception, which does not require receiving an advisory opinion first, without having the Commission decide that it applies.

Legal Counsel Alves stated that he disagreed and he did not believe that the public forum exception was applicable. He informed that a request for a variance is a quasi-judicial hearing and the Petitioner's status as an abutter qualifies him for a hardship exception to appear before his own board. He stated that a public forum is a situation in

which an agency opens up the floor to public comment on no particular issue, with no contested case before the board, and without the intent to take a vote.

Commissioner Heffner suggested removing the public forum language from the advisory opinion for clarity that hardship exception cannot be circumvented by applying the public forum exception. In response to Chair Cheit, Staff Attorney Stewart stated that we can remove the public forum exception language without changing the outcome of the advisory opinion. Staff Attorney Gramitt stated that the Commission should consider clarifying the public forum exception in the future. Upon motion made by Commissioner Heffner and duly seconded by Commissioner Butler, it was unanimously

VOTED: To issue an advisory opinion, as amended and attached hereto, to Robert F. Raimbeault, Jr., an alternate member of the Pawtucket Zoning Board of Review.

[Reporters note: At this time the Commission proceeded to Executive Session because the parties for the Complaint matter were waiting and the petitioners for the final two advisory opinions were not present at the meeting.]

****Commissioner Magro left the meeting at 10:40 a.m.**

At 10:40 a.m., the Commission took a brief recess.

The Commission returned to Open Session at 10:43 a.m. Upon motion made by Commissioner Cerullo and duly seconded by Commissioner Butler, it was unanimously

VOTED: To go into Executive Session, to wit:

a.) Motion to approve minutes of Executive Session held on October 8, 2013, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) and (4).

b.) In re: Tina Jackson, Complaint No. 2013-4, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) and (4).

The Commission reconvened in Open Session at approximately 10:48 a.m.

Chair Cheit reported that during Executive Session the Commission voted to approve an Informal Resolution and Settlement in the matter of In re: Tina Jackson, Complaint No. 2013-4.

[Reporter's Note – The Commission also voted to approve the minutes of the Executive Session held on October 8, 2013. The vote was as follows:

AYES: Robert Salk; Frederick K. Butler; Deborah M. Cerullo; Ross

Cheit.

ABSTENTIONS: Mark B. Heffner.]

**The Commission returned to the remaining two (2) advisory opinions.
The next advisory opinion was that of:**

Kathleen Viera Beaudoin, the former Town Clerk for the Town of Portsmouth, requesting an advisory opinion regarding whether she may accept temporary, part-time employment with the Town of Portsmouth during the scheduled medical leave of the current Town Clerk.

Staff Attorney Gramitt presented the Commission Staff recommendation. The Petitioner was not present. In response to Chair Cheit, Staff Attorney Gramitt stated that he could not recall if this was the first exception to Regulation 5014 granted by the Commission but thought that it might be. Chair Cheit stated that he agreed with the opinion. He noted that the exception was not granted merely because the Petitioner's employment with the Town was described as necessary, but because it was temporary and for the limited duration of the current clerk's medical leave. Upon motion made by Commissioner Butler and duly seconded by Commissioner Cerullo, it was unanimously

VOTED: To issue an advisory opinion, attached hereto, to Kathleen

Viera Beaudoin, the former Town Clerk for the Town of Portsmouth.

The final advisory opinion was that of:

Sean J. McGarry, a member of the New Shoreham Town Council, requesting an advisory opinion regarding whether the Code of Ethics prohibits his business, Block Island Recycling Management, from either extending its existing contracts with the Town or, upon their expiration, bidding on new contracts to perform the same or similar work for the Town.

Staff Attorney Stewart presented the Commission Staff recommendation. The Petitioner was not present. Staff Attorney Stewart stated that the Petitioner was unable to attend because he had a meeting the night before and the earliest ferry from Block Island was at 11:00 a.m. today. Chair Cheit asked whether the Petitioner would be in a better position to attend on a different date. Staff Attorney Stewart replied that if the Commission agrees with the Staff's legal analysis now it would be prudent for the Petitioner to be informed of that decision sooner rather than later.

Staff Attorney Stewart explained that the Petitioner's business has two contracts with the Town of New Shoreham that expire in November 2014, and it is unclear at this time whether the Town Council will extend the contracts or put the work out to bid again. Commissioner Salk stated that maybe the Town Council is not the

place for someone whose income is derived from contracts with the Town. Chair Cheit stated that he hated to decide this matter in the Petitioner's absence but noted that he was not sure that any argument the Petitioner made could change the Commission's decision. Upon motion made by Commissioner Salk and duly seconded by Commissioner Butler, it was unanimously

VOTED: To issue an advisory opinion, attached hereto, to Sean J. McGarry, a member of the New Shoreham Town Council.

Commissioner Heffner stated that he reluctantly voted to approve this opinion and that it was an unfortunate outcome that there was not a way for him to continue both his livelihood and his public service.

The next order of business was New Business. Chair Cheit suggested that the Commission should discuss the public forum exception issue at an upcoming meeting. He also asked Commission Staff to distribute the 2014 tentative Commission meeting schedule to the Commission prior to the next meeting. Commissioner Cerullo stated that she is interested in knowing how other jurisdictions address post-employment revolving door restrictions and would like Commission Staff to provide some information at an upcoming meeting.

At 11:08 a.m. upon motion made by Commissioner Hefner and duly seconded by Commissioner Cerullo, it was unanimously

VOTED: To adjourn.

Respectfully

submitted,

John D. Lynch, Jr.
Secretary